

@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 478 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VADODARA MUNICIPAL CORPORATION KAMDAR KARMCHARI UNION

Versus

VADODARA MUNICIPAL CORPORATION AND OTHERS

Appearance:

1. Special Civil Application No. 478 of 1991

MR RD RAVAL for the Petitioner

MR PRANAV G DESAI for Respondents Nos. 1-4

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 08/12/2004

ORAL JUDGEMENT

The petitioner is a labour union representing the

employees of the Vadodara Municipal Corporation (hereinafter referred to as "the Union"). By the present petition preferred under Article 226 of the Constitution of India the Union challenges the appointment of respondents Nos.3 and 4 as Sr. H.D.P.E. pipe welder in the pay-scale of Rs.1,200-2,040 by promotion. It is the claim of the Union that instead of the respondents Nos.3 and 4 the Corporation ought to have promoted one Ranjitsing Gumansing Waghela and one Rameshchandra Manuprasad Pandya, the members of the Union, as Sr. H.D.P.E. pipe welder.

The Union has claimed that the post of Sr. H.D.P.E. pipe welder under the Vadodara Municipal Corporation, the respondent No.1 herein (hereinafter referred to as "the Corporation") is required to be filled in by promotion strictly in accordance with the seniority. However, the Corporation has appointed the respondents Nos.3 and 4 on the said post though they do not possess the required qualifications.

The reliance is placed on the award of the Industrial Tribunal, Ahmedabad in Reference (IT) Nos.144/1977 and 314/1977. By the said award it was directed, inter alia, that "...For all posts carrying pay scales upto Rs.550-900, promotions should be given on the basis of seniority only." The said award has been confirmed by this Court (Coram: S.A.Shah, J.) on 24th February, 1984 in Special Civil Application No.2955/1983.

The petition is contested by the Corporation. It is denied that the respondents Nos.3 and 4 are promoted to the posts of Sr. H.D.P.E. pipe welder. It is denied that the respondents Nos.3 and 4 were not qualified for such appointment. It is stated that the recruitment to the posts of Sr. H.D.P.E. pipe welder under the Corporation is governed by the rules made in that behalf. The said post is required to be filled in by selection. For such selection the Corporation had invited the applications; held the interviews and prepared the select list keeping in view the service record and the performance at the interview. The respondents Nos.3 and 4 were accordingly selected for appointment to the said post. It is stated that for being appointed as Sr. H.D.P.E. pipe welder a person is required to have passed VIIth Standard examination and a minimum ten years' experience of pipe welding of which three years should be in welding work of 110 mm and bigger pipes. The respondents Nos.3 and 4 had 15 years' and 13 years' experience respectively. Both of them were qualified for being appointed as Sr. H.D.P.E. pipe welder. Both were

selected after due procedure and have been appointed as Sr. H.D.P.E. pipe welder in accordance with the recruitment rules.

In my opinion, the present petition preferred by the Union under Article 226 of the Constitution of India is not maintainable. It is the aggrieved person who has a right to seek relief under Article 226 of the Constitution of India. Besides, the petition involves disputed questions of fact. Therefore also, a petition under Article 226 of the Constitution of India shall not be maintainable.

Petition is accordingly dismissed. Rule is discharged. There shall be no order as to cost.

It is clarified that the petitioner Union or the aggrieved persons shall have liberty to avail of the alternative remedy in the subject matter of this petition.

(Ms. R.M.Doshit, J.)

/sakka